

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**PROGRESSIVE COUNTY MUTUAL  
INSURANCE COMPANY**

**PLAINTIFF**

**v.**

**ISIDRO JAVIER RODRIGUEZ,  
FERMAN TRUCKING, LLC, TANH  
TRAN, AND THU TAN THAI  
DEFENDANTS**

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**CIVIL ACTION NO. 1:23-cv-01465**

**PLAINTIFFS' ORIGINAL COMPLAINT  
AND REQUEST FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, plaintiff, PROGRESSIVE COUNTY MUTUAL INSURANCE COMPANY and files this original complaint for declaratory judgment against the defendants, and would respectfully show unto this Honorable Court as follows:

**Parties and Service**

1. Plaintiff, PROGRESSIVE is a casualty insurance company formed and existing under the laws of the State of Ohio with its principal place of business in Ohio. PROGRESSIVE is authorized to conduct insurance business in the State of Texas. PROGRESSIVE is a citizen of Ohio for purposes of diversity jurisdiction.

2. TANH TRAN is a Plaintiff in an underlying tort lawsuit upon which this declaratory judgment action is based and, as a practical matter, his interests will be impaired, impeded or affected by the judgment rendered herein. As such, TANH TRAN is a party interested in the outcome of this litigation.

3. THU TAN THAI is a Plaintiff in an underlying tort lawsuit upon which this declaratory judgment action is based and, as a practical matter, hers interests will be impaired, impeded or affected by the judgment rendered herein. As such, THU TAN THAI is a party interested in the outcome of this litigation.

4. ISIDRO JAVIER RODRIGUEZ is a Defendant in the underlying lawsuits upon which this declaratory judgment action is based and, as a practical matter, his interests will be impaired, impeded or affected by the judgment rendered herein. As such, ISIDRO JAVIER RODRIGUEZ is a party interested in the outcome of this litigation.

5. FERMAN TRUCKING, LLC, is a Defendant in the underlying lawsuits upon which this declaratory judgment action is based and, as a practical matter, its interests will be impaired, impeded or affected by the judgment rendered herein. As such, FERMAN TRUCKING, LLC is a party interested in the outcome of this litigation.

### **Jurisdiction and Venue**

6. This Court has jurisdiction over this matter pursuant to 28 USC § 1332 because all parties are diverse as to citizenship and because the amount in controversy exceeds \$75,000.00. Additionally, jurisdiction is predicated upon 28 USC § 2201 because PROGRESSIVE is seeking declaratory relief pursuant to the statute.

7. Venue is proper in the Western District of Texas, Austin Division pursuant to 28 USC § 1391(b)(1) because the Underlying Lawsuits out of which this coverage dispute arises are pending in the 419th Judicial District Court and 261<sup>st</sup> Judicial District Court of Travis County, Texas.

### **Statement of the Case and Summary**

8. PROGRESSIVE brings this request for declaratory judgment under Rule 57 of the Federal Rules of Civil Procedure and pursuant to 28 U.S.C. Sections 2201 and 2202.

9. This declaratory judgment action is necessary to determine whether PROGRESSIVE owes a defense and/or indemnity to ISIDRO JAVIER RODRIGUEZ and FERNAN TRUCKING, LLC in the lawsuits filed by TANH TRAN and TUI TAM THAI. PROGRESSIVE issued a Commercial Auto policy to FERNAN TRUCKING, LLC that included liability coverage, subject to certain limits as well as the conditions, exclusions and other limitations set forth in the policy.

10. TANH TRAN filed suit against FERNAN TRUCKING, LLC and ISIDRO JAVIER RODRIGUEZ in Cause Number D-1-GN-002070 in the 261<sup>st</sup> District Court, Travis County, Texas. TUI TAM THAI filed suit against FERNAN TRUCKING, LLC and ISIDRO JAVIER RODRIGUEZ in Cause Number D-1-GN-23-003267, in the 419<sup>th</sup> District Court, Travis County, Texas.

11. PROGRESSIVE is currently defending ISIDRO JAVIER RODRIGUEZ and FERNAN TRUCKING, LLC subject to a reservation of rights.

**Factual Background and the Underlying Lawsuits**

12. The Underlying Lawsuits arise from a motor vehicle accident that occurred on November 30, 2021 on Interstate 10 in Brookshire, Texas. Tanh Tran alleges he was driving a 2021 Dodge Ram when he was struck from behind by a tractor-trailer driven by Isidro Javier Rodriguez, who was allegedly in the course and scope of his employment with Ferman Trucking, LLC. Tran claims he was injured as a result and alleges his damages exceed \$1,000,000.00. Thu Tam Thai alleges she was a passenger in Tran's vehicle and was also injured in the accident. Thai seeks monetary relief of over \$200,000.00, but not more than \$1,000,000.00.

13. Plaintiff Tran's and Plaintiff Thai's Original Petition filed in the Underlying Lawsuits are attached hereto as Exhibits 1 and 2, respectively, and incorporated herein by reference as if set forth verbatim.

14. The Plaintiffs contend that the negligence Isidro Javier Rodriguez proximately caused their respective damages. (Exhibit 1, section 7; Exhibit 2, section V.). Both Plaintiffs allege Ferman Trucking, Inc. was negligent individually and under the theory of respondeat superior. (Exhibit 1, section 8; Exhibit 2, section V.). Both Plaintiffs further allege gross negligence as to Rodriguez and Ferman and seek exemplary damages. (Exhibit 1, section 11; Exhibit 2, section VI.).

#### **The Policy**

15. PROGRESSIVE issued a Commercial Auto Policy under Policy Number 03819601-0, effective June 22, 2021 to June 22, 2022 that provided auto liability coverage ("the Policy"), subject to the terms, limitations, exclusions and conditions stated in the Policy. The named insureds were Jose S. Ferman Rubio and Ferman Trucking.

#### **Causes Of Action: Declaratory Relief**

16. PROGRESSIVE contends and will show that it does not owe a duty of defense or indemnity to Isidro Javier Rodriguez or Ferman Trucking.

17. The Policy contains exclusions that bar coverage for any auto or attached trailer being operated or used to carry property or for any business purpose. The relevant exclusion is triggered by the operative pleading filed in the Underlying Lawsuit.

18. Pleading further and in the alternative, if necessary, PROGRESSIVE will show that the Policy, by its explicit terms, does not provide coverage for punitive or exemplary damages.

19. Furthermore, the same reasons that negate defense negate the possibility that indemnity will be owed; therefore, PROGRESSIVE seeks a declaration that no duty of defense or indemnity is owed Isidro Javier Rodriguez or Ferman Trucking LLC in connection with the claims raised by the Underlying Lawsuits.

**Relief Sought**

20. PROGRESSIVE asks for a declaration from this Court that it does not owe a duty of defense or indemnity to Isidro Javier Rodriguez or Ferman Trucking LLC in the Underlying Lawsuits.

21. PROGRESSIVE is entitled to recover its reasonable and necessary attorney's fees in prosecuting this declaratory judgment action. PROGRESSIVE retained the law firm of Farmer, House, Osuna & Olvera to represent it in this action, and has agreed to pay the firm reasonable and necessary attorney's fees. Award of these fees would be equitable and just and are authorized by statute.

**Prayer**

22. PROGRESSIVE prays that upon final consideration of this matter that this Court enter declarations as follows:

- a. A declaration that PROGRESSIVE does not owe a duty to defend Isidro Rodriguez or Ferman Trucking, LLC in the Underlying Lawsuits; and
- b. A declaration that PROGRESSIVE does not owe a duty to indemnify Isidro Javier Rodriguez or Ferman Trucking, LLC in the Underlying Lawsuits.

PROGRESSIVE further prays for recovery of all costs and expenses, including attorneys' fees, incurred in the prosecution of this declaratory action, and all other relief PROGRESSIVE may show itself justly entitled, at law or in equity.

DATED: \_\_\_\_\_, 2023

Respectfully submitted,

*/s/ Nicholas A. Parma*

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